No. 94-1511 (1D)

In The

Supreme Court of the United States

October Term, 1995

SAMUEL LEWIS, *et al.*,

Petitioners,

v.

FLETCHER CASEY, JR., *et al.*,

Respondents.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF FOR CALIFORNIA AND OTHER STATES AS AMICI CURIAE SUPPORTING THE PETITIONERS

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QUESTION PRESENTED

Does the district court's order in this "access to courts" case, which greatly expands the State of Arizona's financial and administrative burdens and shifts much of the management of the state's prison system to the federal judiciary, exceed the constitutional requirements set forth in *Bounds v. Smith*, 430 U.S. 817 (1977)?

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INTEREST OF THE AMICI CURIAE

This brief in support of the Petitioners, prison officials of the Arizona Department of Corrections, is submitted on behalf of the State of California and the other signature States ("the Amici States") through their Attorneys General pursuant to Supreme Court Rule 37.5. The Amici States have an important interest in this case because they all operate correctional facilities in which they must assist the persons whom they incarcerate in obtaining access to courts.

The fundamental constitutional right at issue in this case is the right of access to courts. "[T]he fundamental right of access to courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." *Bounds v. Smith*, 430 U.S. 817, 828 (1977). Under *Bounds*, the constitutional right of access requires a state to provide a law library or legal assistance only during the pleading stage of a habeas or civil rights action.

Seizing upon the term "meaningful," and ignoring the limited scope and duration of prison authorities' duty to assist prisoners, the Court of Appeals for the Ninth Circuit has affirmed an order of the District Court of Arizona which dramatically expands the physical access to law libraries that states must allow prisoners, the legal materials they must be provided, and the legal assistance which must be available to all prisoners, even prisoners who have physical access to a law library. *Casey v. Lewis*, 43 F.3d 1261 (9th Cir. 1994).

Nothing in the order affirmed by the Ninth Circuit is necessary to remedy any violation of the constitutional

right described in *Bounds*. The Amici States seek an opinion from this Court which clarifies the limits on their duties under the Constitution so that lower courts might avoid immersion in the details of prison administration under the guise of providing "meaningful" access to courts.

SUMMARY OF ARGUMENT

Pursuant to this Court's decision in *Bounds v. Smith*, 430 U.S. at 825-828, a constitutional right of access to courts requires a state to provide legal materials or legal assistance only during the pleading stage of a habeas corpus or civil rights action. The court of appeals disregarded established limitations on the scope of the constitutional right as well as limitations on the scope of relief which may be imposed to protect the right. The lower courts in this case disregarded the limited nature of the duty owed by state officials. This disregard infects each provision of injunctive relief ordered and affirmed. Indeed, the error is compounded because the decision below would impose both excessive library access and excessive legal assistance.

The scope of injunctive relief must be no broader than necessary to remedy a constitutional violation. The Ninth Circuit did not heed this standard when reviewing the injunctive relief ordered by the district court. Instead it affirmed the injunctive relief upon findings that the remedies ordered by the district court were merely "reasonable" or "not unreasonable." Therefore it failed to constrain itself to consider whether the relief ordered was

necessary to protect the constitutional right described and circumscribed in *Bounds*. This led the court of appeals to affirm an order that was both too expansive in scope and so specific that it results in micro-management of the prisons. Had the court of appeals reviewed the injunction under the proper standard, it would have been compelled to reject it in its entirety.

Federal courts are limited in their power to order injunctive relief against the states to those remedies necessary to cure a constitutional violation. This Court has stressed the deference owed to prison officials in the operation and management of prisons. Moreover, the duty of prison officials to assist inmates in the preparation and filing of petitions and complaints is at best loosely anchored in the Constitution. These factors, alone and in combination, counsel in favor of great restraint when a federal court reviews the adequacy of the law library or legal assistance provided by state prison officials or imposes any remedy.

ARGUMENT

NONE OF THE REQUIREMENTS AFFIRMED BY THE COURT OF APPEALS IS NECESSARY TO PROTECT PRISONERS' ACCESS TO COURTS

A. The Proper Standard of Review

This Court recently reaffirmed "the bedrock principle that 'federal court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate the Constitution or does not flow from such a violation.' " *Missouri v. Jenkins*, ___ U.S. ___, 115 S.Ct.

2038, 2054 (1995), *quoting Milliken v. Bradley*, 433 U.S. 267, 282 (1977). It also "emphasized that 'federal courts in devising a remedy must take into account the interests of state and local authorities in managing their own affairs consistent with the Constitution.' [citation omitted]." *Id.* Moreover, "[i]njunctive relief must be no broader than necessary to remedy the constitutional violation." *Toussaint v. McCarthy*, 801 F.2d 1080, 1086 (9th Cir. 1986), *cert. denied*, 481 U.S. 1069 (1987), *citing Milliken*, 433 U.S. at 280. These admonitions have been too often forgotten by the federal courts in the use of "structural injunctions" to manage state prisons. *Jenkins*, 115 S.Ct. at 2067 (Thomas, J., conc.) Perhaps nowhere is the interest of the states greater and the deference to be given to prison officials by the federal courts stronger than in the administration of this nation's prisons. *Turner v. Safley*, 482 U.S. 78, 89 (1987); *Bell v. Wolfish*, 441 U.S. 520, 550 (1979).

A critically important point overlooked by the court of appeals is that the federal courts may only evaluate the reasonableness of a prison regulation if it "impinges on inmates' constitutional rights. . . . " *Turner*, 482 U.S. at 89. The amici states agree with petitioner that if any of Arizona's regulations or policies impinge upon the prisoners' right of access to courts, then evaluation under the deferential standard set forth in *Turner* is appropriate. Since amici contend, however, that all of the policies and procedures in this case are constitutional under *Bounds*, the Court need not engage in the analysis required when prison officials infringe upon an inmate's constitutional rights.

After giving token recognition to the above tests of constitutionality and necessity, the court of appeals actually applied tests of judicial discretion and reasonableness. This is fundamental error in two significant ways. First, because Arizona was in compliance with the constitutional demands as set forth in *Bounds*, there was no need to evaluate the reasonableness of any infringement of prisoners' constitutional rights. Second, assuming *arguendo* that any policy or procedure in Arizona may have impinged on a constitutional right, *Turner* instructs that the federal courts are to evaluate the reasonableness of the ***prison officials'*** actions. Rather than following *Turner*, the court of appeals gave no deference to the judgment of prison officials, but instead evaluated only the reasonableness of the ***district court's*** remedies.

In essence, the court of appeals erroneously took far too broad a view of the equitable powers of a federal court. As set forth below, it read *Bounds* far too expansively to find constitutional violations where none existed. It then evaluated the relief ordered by the district court either under an improper standard or under no standard at all. This led the court to affirm relief which was beyond the jurisdiction of the federal courts.

In reviewing the additional legal materials that prison officials were ordered to provide and the required training for library staff, the Ninth Circuit found either that the relief was "reasonable" or "not unreasonable." *Casey*, 43 F.3d at 1270-71. It affirmed the extension of hours of operation of the law libraries based on its finding that the required hours did not "constitute 'unlimited access.' [citation omitted]." *Id.* at 1271. It required the showing of training video tapes on the bases that these

tapes would help make the library accessible to inmates and that defendants failed to show any hardship from making the tapes available. *Id.* It upheld the requirement that prisoners be allowed at least three twenty-minute telephone calls per week to their attorneys because the Arizona Department of Corrections could implement the measure with little cost and it could potentially save staff time otherwise spent on screening out non-emergency calls. *Id.* at 1272. In no instance did the Ninth Circuit ever find that the relief was necessary to remedy a constitutional violation. Had the Ninth Circuit reviewed the injunctive relief ordered by the district court under this standard it would have been compelled to reverse each and every part of the injunction.

B. Limitations on the Duty to Assist Prisoners in the Filing of Habeas Corpus and Civil Rights Actions and the Scope of Injunctive Relief

For at least two reasons, this Court should speak definitively to limit *Bounds* to its original terms: First, the constitutional underpinnings of the *Bounds* duty to assist are questionable. *See Bounds*, 430 U.S. at 834-835 (Burger, C.J., dissenting), 836-837 (Stewart, J., dissenting), 837-841 (Rehnquist, J., dissenting); *see also, Murray v. Giarratano*, 492 U.S. 1, 11 and n.6 (1989). Second, the federal courts must tread very carefully in ordering changes in prison operations to accommodate the right of access to courts.

Prison officials have no constitutional duty under *Bounds* to provide legal assistance for any purpose other than to initiate a civil rights or habeas corpus action. Accordingly this Court should clarify that not only did

the injunctive relief ordered and affirmed in this case exceed constitutional requirements, but Arizona already exceeded the requirements of *Bounds* in every regard prior to the entry of injunctive relief.

If prison officials provide inmates with legal materials or legal assistance adequate for the filing of a petition or complaint, no constitutional violation exists. In the absence of a constitutional violation, no remedy may be imposed against the prison officials. The Constitution does not require prison officials to provide inmates with well-stocked law libraries, direct physical access to libraries, countless hours to draft factual pleadings in a library or the assistance of trained legal personnel if administrators choose to provide access to library materials. Accordingly, the decision of the Ninth Circuit should be reversed.

C. The Limited Scope and Duration of The Duty to Assist

Under *Bounds*, "the constitutional right of access requires a state to provide a law library or legal assistance only during the pleading stage of a habeas or civil rights action." *Cornett v. Donovan*, 51 F.3d 894, 898 (9th Cir. 1995). This Court's opinion in *Bounds* states repeatedly that the right of access to courts encompasses only the filing of habeas corpus petitions and civil rights complaints. *See Bounds v. Smith*, 430 U.S. at 823 (discussing holding in *Johnson v. Avery*, 393 U.S. 483, 489 (1969) that ban on inmate assistance effectively prevented some prisoners from preparing petitions to challenge legality of their confinement and extension of that holding to civil

rights actions in *Wolff v. McDonnell*, 418 U.S. 539, 577-580 (1974)); 825 ("inquiry is rather whether law libraries or other forms of legal assistance are needed to give prisoners a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts" and discussion of basic requirements for filing of habeas corpus petition or civil rights complaint); 827 ("in this case, we are concerned in large part with original actions seeking new trials, release from confinement, or vindication of fundamental civil rights" and emphasizing that "habeas corpus and civil rights actions are of 'fundamental importance . . . in our constitutional scheme . . . ' "); 828 n.17 ("our main concern here is 'protecting the ability of an inmate to prepare a petition or complaint.' "). Thus, this Court has only compelled the states to provide assistance to prisoners in two limited areas of law – civil rights complaints and habeas corpus petitions – and it has limited the duration for which assistance must be provided.

While the narrow scope of the right of access now seems clear, its practical meaning has been anything but clear in the lower courts. Indeed, the decision of the Ninth Circuit in *Cornett* cites the opinion in the present case as consistent with the rule that access is required only for the filing of a habeas or civil rights action. *Cornett*, 51 F.3d at 900, citing *Casey*, 43 F.3d at 1268. In fact, however, the court of appeals in this case affirmed an injunction which both implicitly and explicitly presumes a much broader scope of the duty to assist. *E.g.*, *Casey*, 43 F.3d at 1277 (injunction requires videotape training in relevant tort and civil law, including immigration and family issues). This and other clear errors would not

have occurred had the court of appeals obeyed the limits set by this Court in *Bounds*.

Both habeas corpus and civil rights pleadings are essentially fact based. *Bounds*, 430 U.S. at 825; *see*, Rules Foll. § 2254. Prisoner *pro se* papers are liberally construed. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Although the liberal standards for prisoner pleadings do not obviate the need to provide prisoners with law libraries or legal assistance, *Bounds*, 430 U.S. at 825-826, these standards should nevertheless be considered to confine the scope of what duty prison officials owe prisoners as a matter of constitutional necessity.

D. Specific Injunctive Relief

Reviewing the scope of the injunctive relief affirmed by the court of appeals, it is clear that it is excessive in every regard. The most basic error which pervades the entire injunction is the lower courts' conjunction of access to a law library with legal assistance. This is flatly inconsistent with this Court's holding "that the fundamental constitutional right of access to courts requires prison officials to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries *or* adequate assistance from persons trained in the law," *Bounds*, 430 U.S. 828 (emphasis added). The court of appeals' holding that meaningful access requires both adequate law libraries *and* legal assistance, *Casey*, 43 F.2d at 1270, must be reversed.[1]

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[1] To the extent that the court of appeals based its deviation from this Court's holding in *Bounds* on its finding that some

The Ninth Circuit also erred when it affirmed the order requiring Arizona to provide regional reporters and digests in prison law libraries. Arizona already provides a library far in excess of that required for an inmate to file a civil rights or habeas corpus action. As noted by petitioner, each library is stocked at a minimum with the following materials: United States Code Annotated, Supreme Court Reporter, Federal Reporter (Second), Federal Supplements, Shepard's U.S. Citations, Shepard's Federal Citations, Local Rules for the Federal District Court, Modern Federal Practice Digest, Federal Practice Digest (Second), Arizona Code Annotated, Arizona Reports, Shepard's Arizona Citations, Arizona Appeals Reports, Arizona Rules of Evidence (Udall), ADC Policy Manual, 108 Institutional Management Proceedings, Federal Practice and Procedures (Wright), Corpus Juris Secundum, and Arizona Digests. Pet. App. B at 32a-33a. Petitioner noted that some of the libraries also included prisoner self-help manuals. Pet. App. B. at 34a.

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prisoners are poorly educated or do not speak English, *Casey*, 43 F.3d at 1270, these facts are so obvious that "[i]t presses credulity to contend" that this Court's decision in *Bounds* would have been different if it had recognized that some inmates might have difficulty using a law library. *Hooks v. Wainwright*, 775 F.2d 1433, 1436 (11th Cir. 1985), *cert. denied*, 479 U.S. 913 (1986). The court of appeals also appeared to base the requirement of legal assistance on its belief that skilled legal assistants might reduce the burden on the courts. *Casey*, 43 F.3d at 1268 and n.6. Not only is this an entirely inappropriate consideration in determining the existence of a constitutional violation or the need for a remedy, it is a tacit acknowledgment by the court of appeals that inmates are not having any difficulty gaining access to the courts.

The Ninth Circuit simply found that the order to provide regional case reporters and other materials was "reasonable." *Casey*, 43 F.3d at 1270-71. The court of appeals did not find that these materials were necessary for court access under *Bounds*, nor did it find that the materials already in the library were insufficient to prepare a civil rights complaint or habeas corpus petition. Amici submit that this Court should recognize that the materials in the Arizona law libraries exceed the minimum required under *Bounds*, and conclude that there is no constitutional basis for ordering Arizona to do more.

The court of appeals committed clear error when it affirmed the sections of the injunction in which the district court ordered direct physical access to the law library for all inmates, regardless of the potential security risk posed by some maximum security inmates. *Casey*, 43 F.3d at 1271. It then erroneously affirmed the ruling that once in the library inmates must also be permitted to browse in the stacks in search of " 'a chance discovery of an obscure or forgotten case.' " *Id.*, at 1267, *quoting Toussaint v. McCarthy*, 801 F.2d at 1110. In addition the court of appeals erroneously affirmed a requirement that the libraries must be open at least fifty hours per week to serve the needs of the Arizona prison population. *Id.* at 1271.[2]

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[2] Using the formula devised by the district court for hours of operation at facilities which require an advance request for library use, California estimates that given the size of its prison facilities the libraries would have to remain open 24 hours per day for five days per week to satisfy the order approved in this case.

Once again, these requirements are far in excess of those necessary to satisfy the fundamental constitutional right at issue in *Bounds*. It is well established that a prisoner's right of access to court does not include a right to appear personally in the court house. *Holt v. Pitts*, 619 F.2d 558, 560-561 (6th Cir. 1980); *Ballard v. Spradley*, 557 F.2d 476, 480 (5th Cir. 1977); *Matter of Warden of Wisconsin State Prison*, 541 F.2d 177, 180-181 (7th Cir. 1976); *McKinney v. Boyle*, 447 F.2d 1091, 1094 (9th Cir. 1971). By the same token, the right of access to a law library need only encompass the right to reasonable use of legal materials. Direct physical access to a library is not necessary to protect the right of access to court.

As the Court acknowledged in *Bounds*, a habeas corpus petition or a civil rights complaint need only set forth facts. *Bounds*, 430 U.S. at 825. Therefore most of the drafting of the petition or complaint can be done in the inmate's cell or any other location where the prisoner has available to him the materials necessary to draft his pleading. To the extent that the prisoner requires the use of a law library to assist him in the drafting of his pleading, the institution must make available to him the necessary materials. There is nothing of any constitutional significance about the building in which the prison chooses to house its collection of law books. An exact-cite paging system, or any other system that ensures that prisoners have the opportunity to use the materials in the law library, suffices to satisfy prison administrators' duty under *Bounds*.

Finally, there is simply no constitutional basis for the holding that the right of access to court requires prison

officials to provide inmates with telephone calls to lawyers. Since Arizona has chosen to provide inmates with access to law libraries there is no further right to legal assistance. Therefore, there was no need for the court of appeals to engage in further discussion of the method by which Arizona must provide access to lawyers.

Moreover, in *Bounds*, this Court carefully worded its holding that an alternative to providing prisoners with an adequate law library would be to provide them with "adequate assistance from persons trained in the law." *Bounds*, 430 U.S. at 828. The Constitution does not require that inmates be provided with lawyers. *See, Lindquist v. Idaho State Bd. of Corrections*, 776 F.2d 851, 854 (9th Cir. 1985); *Hooks v. Wainwright*, 775 F.2d at 1437. Alternatives to attorneys include "the training of inmates as paralegal assistants to work under lawyers' supervision [and] the use of paraprofessionals and law students. . . . " *Bounds*, 430 U.S. at 831. This Court stressed that "a legal access program need not include any particular element we have discussed . . . ," and it expressly upheld the court order in *Bounds* because it left prison officials with "wide discretion." *Id.* at 832-833. Since prison officials cannot be compelled under the Constitution to provide inmates with lawyers, it follows that they cannot be compelled to provide prisoners with telephone calls to lawyers.

Amici recognize that, in some civil rights or habeas cases, prisoners will be represented by counsel who have been retained by the inmate or appointed by the court under other provisions of the law. Consistent with this Court's recognition in *Bounds* of the discretion which necessarily remains with prison officials, federal courts should not prescribe any method through which inmates

may discuss their case with counsel. A regulation which limits contacts to face-to-face meetings or to correspondence is facially valid. There is no basis upon which this Court could conclude that telephone calls to lawyers are necessary to protect the constitutional right of access to courts.

CONCLUSION

For the reasons stated above and in the Petition for Writ of Certiorari, the decision of the Ninth Circuit should be reversed, and prison officials should only be required to provide prisoners with the minimum resources required for the initial filing of a civil rights complaint or a habeas corpus petition.

Respectfully submitted,

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